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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205687
Party	Defendant ECHL, Inc.
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Submission	Answer
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Date	07/30/2012
Attachments	Answer to Notice of Opposition No. 91205687.pdf ( 7 pages )(91361 bytes )

David D'AMATO	)	
	)	
Opposer,	)	
	)	Opposition No. 91205687
v.	)	
	)	Mark: ORLANDO SOLAR BEARS
	)	Serial No.: 85421579
ECHL, Inc.	)	Published: February 21, 2012
	)	
Applicant.	)	

Applicant's Answer to Notice of Opposition

Applicant, ECHL, INC., for its answer to the Notice of Opposition filed by David D’Amato against application for registration of ECHL, Inc.’s trademark “ORLANDO SOLAR BEARS”, Serial No. 85,421,579, filed June 19, 2012 and published in the Official Gazette of February 21, 2012, pleads and avers as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

2. Answering paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

3. Answering paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

4. Answering paragraph 4 of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant does note that Exhibit A appears to be a copy of United States Copyright Registration No. VAU 163,834 for silk screen reproductions entitled, "SOLAR BEARS- Group I; Windsurfer, Jet Skier, Fisher bear, Standing Surfer, Balloon Bears." Applicant specifically denies that the referenced Copyright Registration No. VAU 163,834 confers any trademark rights to Opposer.

5. Answering paragraph 5 of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant does note that Exhibit B appears to be a copy of United States Copyright Registration No. VAU 166,467 for silk screen reproductions entitled, "Skin Diver Bear, Soccer Bear, Skateboard Bear, Standing Surfer Bear, Surfing Bear, Family Bears." Applicant specifically denies that the referenced Copyright Registration No. VAU 166,467 confers any trademark rights to Opposer.

6. Answering paragraph 6 of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations.

7. Answering paragraph 7 of the Notice of Opposition Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations.

8. Answering paragraph 8 of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations.

9. Applicant admits it is a corporation and is engaged or has a *bone fide* intention to manufacture, distribute, and sell clothing, namely T-Shirts, sweatshirts, hats and polo shirts bearing the proposed ORLANDO SOLAR BEARS mark in connection to a professional ice hockey team. Except as specifically admitted herein the allegations contained in paragraph 9 of the Notice of Opposition are denied.

10. Applicant admits the allegations contained in paragraph 10 of the Notice of Opposition.

11. Applicant admits the allegations contained in paragraph 11 of the Notice of Opposition.

12. Answering paragraph 12 of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein regarding Opposer's Goods and accordingly denies the allegations.

13. Answering paragraph 13 of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein regarding Opposer's Goods and accordingly denies the allegations.

14. Answering paragraph 14 of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein regarding Opposer's sale of goods and the channels of trade of Opposer's Goods and accordingly denies the allegations.

15. Answering paragraph 15 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

16. Answering paragraph 16 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
17. Answering paragraph 17 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
18. Answering paragraph 18 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
19. Answering paragraph 19 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
20. Answering paragraph 20 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
21. Answering paragraph 21 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
22. Answering paragraph 22 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
23. Answering paragraph 23 of the Notice of Opposition, Applicant admits the proposed mark ORLANDO SOLAR BEARS contains the words SOLAR BEARS.
24. Answering paragraph 24 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
25. Answering paragraph 25 of the Notice of Opposition, Applicant admits it has disclaimed the exclusive rights to the use of the word ORLANDO apart from the proposed mark.
26. Answering paragraph 26 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

27. Answering paragraph 27 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
28. Answering paragraph 28 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
29. Answering paragraph 29 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
30. Answering paragraph 30 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
31. Answering paragraph 31 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

#### **AFFIRMATIVE DEFENSES**

1. Opposer's Notice of Opposition fails to state any claim upon which relief may be granted.
2. Applicant's mark "ORLANDO SOLAR BEARS", when applied to the goods and services identified in Application Serial No. 85,421,579 is not likely to cause confusion, to cause mistake or deception with the mark allegedly owned by Opposer.
3. Opposer does not own trademark rights in the mark "SOLAR BEARS".
4. Upon information and belief the mark "Orlando Solar Bears" registration No. 2468622 was used by registrant RDV Sports, Inc without any confusion, mistake or deception with the mark allegedly owned by Opposer. Therefore, Opposer's claims are barred by the doctrine of laches, estoppel, acquiescence and waiver.

5. Respondent reserves the right to set forth additional defenses as evidence is discovered during the discovery period.

In view of the foregoing, Applicant contends that this opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's trademark; that Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer and Applicant prays that this Opposition be dismissed and that Applicant be granted registration of its trademark.

This the 30<sup>th</sup> Day of July, 2012

Respectfully submitted,  
Hendrick, Bryant & Nerhood, LP

/Kenneth C. Otis/  
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*Certificate of Service*

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was mailed first-class mail, postage prepaid, to Anthony N. Elia, The Law Firm of Anthony N. Elia, P.C., 325 Broadway Suite 201, New York, NY 10007, attorneys for Opposer, this 30th day of July, 2012 .

/Kenneth C. Otis/

Attorney for Applicant